

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

NOV 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

GTE Telephone Operating Companies
GTOC Tariff No. 1
GTOC Transmittal No. 1148

CC Docket No. 98-79

MCI WORLDCOM PETITION FOR RECONSIDERATION

I. Introduction

Pursuant to Section 1.106 of the Commission's Rules, MCI WorldCom, Inc. (MCI WorldCom) hereby submits its petition for reconsideration of the ADSL Tariff Order, released October 30, 1998.¹

MCI WorldCom does not seek reconsideration of the ADSL Tariff Order's conclusion that GTE's ADSL service is properly tariffed at the federal level. As MCI WorldCom has demonstrated throughout this proceeding, ADSL, like any other transmission technology, clearly has both interstate and intrastate uses, and is thus properly tariffed at both the federal and state levels.²

¹In the Matter of GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, Memorandum Opinion and Order, CC Docket No. 98-79 (released October 30, 1998) (ADSL Tariff Order).

²MCI WorldCom Comments on Direct Cases, CC Docket Nos. 98-79, 98-103, 98-161, September 18, 1998.

No. of Copies rec'd 044
List ABCDE

However, MCI WorldCom respectfully requests that the Commission reconsider its finding that the use of GTE's ADSL service to connect end users to an Internet Service Provider (ISP) Point of Presence (POP) in the same state is an interstate use. In particular, MCI WorldCom requests that the Commission reconsider its conclusion that "the communications at issue here do not terminate at the ISP's local server, as some competitive LECs and ISPs contend, but continue to the ultimate destination or destinations, very often at a distant Internet website accessed by the end users."³ This conclusion is inconsistent with the Commission's statements in the Universal Service Report to Congress⁴ and other Commission precedent.

II. The ISP POP is the Relevant End Point for Jurisdictional Analysis

In the ADSL Tariff Order, the Commission states that it "has never found that 'telecommunications' ends where 'enhanced' information service begins,"⁵ and then goes on to reach the opposite conclusion -- that telecommunications continues through the ISP POP to the distant website.⁶ Having determined that telecommunications continues through the ISP POP to the distant website, the Commission then determines that the relevant end points for jurisdictional analysis are the end user location and the distant Internet site.⁷

³ADSL Tariff Order at ¶19.

⁴Federal State Joint Board on Universal Service, Report to Congress, 13 FCC Rcd 11501 (1998) (Universal Service Report to Congress).

⁵ADSL Tariff Order at ¶20.

⁶Id. at ¶19.

⁷Id. at ¶20.

In other words, the Commission's jurisdictional analysis treats the ISP as if it is a provider of telecommunications. The Commission's analysis assumes that there is end-to-end telecommunications between the end user and the distant website, with one portion provided by GTE and the other portion provided by the ISP. The end user and the distant website are treated as the end points of the telecommunications, while the ISP POP is treated as an "intermediate point of switching" that, in the Commission's view, has no significance for the jurisdictional analysis.

A. Because "Telecommunications" Ends at the ISP POP, the End User and the ISP POP are Relevant End Points for Jurisdictional Analysis

Because it treats the ISP as if it is a provider of telecommunications, the Commission's jurisdictional analysis is completely inconsistent with the statutory definitions of "information service" and "telecommunications," as the Commission has interpreted those terms in the Universal Service Report to Congress and in orders adopted since the passage of the 1996 Act.⁸ Throughout the Universal Service Report to Congress and these orders, the Commission has emphasized repeatedly that information service providers do not provide telecommunications.⁹

The ADSL Tariff Order assumes that telecommunications continues through the ISP POP simply because the ISP uses telecommunications.¹⁰ But this assumption is

⁸See, e.g., Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9180-81 (1997); Amendment of the Commission's Rules and Regulations Governing Pole Attachments, Report and Order, 13 FCC Rcd 6777, 6794-95 (1998).

⁹See, e.g., Universal Service Report to Congress at ¶¶41, 66.

¹⁰ADSL Tariff Order at ¶20.

inconsistent with the Commission's conclusion in the Universal Service Report to Congress that information service providers are not transformed into providers of telecommunications simply because they use telecommunications.¹¹ In fact, the Commission specifically concluded in the Universal Service Report to Congress that "when an entity [such as an ISP] offers subscribers the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, it does not provide telecommunications, it is using telecommunications."¹²

Because ISPs do not provide telecommunications to their subscribers, there cannot be end-to-end telecommunications between the end user and the distant website. Telecommunications must "end" at the ISP POP, even though the ISP may use telecommunications in "generating, acquiring, storing, transforming, processing, retrieving, or making available information via telecommunications." Thus, the Commission's conclusion that the distant website is a relevant end point for the purposes of jurisdictional analysis -- a conclusion that assumes the existence of an "end to end ADSL

¹¹Universal Service Report to Congress at n. 138 ("Under Computer II, and under our understanding of the 1996 Act, we do not treat an information service provider as providing a telecommunications service to its subscribers. The service it provides to its subscribers is not subject to Title II, and is categorized as an information service. The information service provider, indeed, is itself a user of telecommunications; that is, telecommunications is an input in the provision of an information service.")

¹²Id. at ¶41 (emphasis added).

communication”¹³ or “end to end Internet access service”¹⁴ between the end user and the distant website -- is incorrect.

The Commission should reconsider its conclusion, and find instead that the relevant end points for the purposes of jurisdictional analysis are the end points of GTE’s ADSL telecommunications service -- the end user and the ISP POP. The location of any websites accessed as part of the information service provided by the ISP is irrelevant to determining the jurisdiction of GTE’s ADSL service or any other telecommunications service used to connect end users to ISP POPs.

B. The BellSouth MemoryCall Decision Confirms that the ISP POP is a Relevant End Point for Jurisdictional Analysis

GTE and several other parties have argued that the BellSouth MemoryCall¹⁵ decision supports their position that the distant website is a relevant end point for the purposes of jurisdictional analysis.¹⁶ In BellSouth MemoryCall, the Commission rejected the argument that a call to BellSouth’s voice mail platform was actually two calls -- one call from the calling party to the BellSouth switch serving the voice mail platform and then a second call from BellSouth’s switch to the voice mail platform.¹⁷ Because calls from an

¹³ADSL Tariff Order at ¶20.

¹⁴Id. at ¶21.

¹⁵Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992) (BellSouth MemoryCall).

¹⁶GTE Rebuttal at 5-6.

¹⁷BellSouth Memory Call, 7 FCC Rcd at 1621.

out-of-state caller to the voice mail platform were, according to this analysis, jurisdictionally interstate, the Commission found that BellSouth's voice mail service was a "jurisdictionally mixed" enhanced service.¹⁸

GTE has contended in this proceeding that, in BellSouth MemoryCall, "the Commission rejected the two-call theory despite the fact that two types of services were involved in the end-to-end communication."¹⁹ To the contrary, in BellSouth MemoryCall, there was only one type of service involved in the end-to-end communication -- a telecommunications service. The issue addressed in BellSouth MemoryCall was whether the telecommunications between an out-of-state caller and the voice mail platform was one call or two separate calls. In this respect, the BellSouth MemoryCall decision is identical to the other precedents cited by the Commission: it stands for the principle that jurisdiction over a telecommunications service depends on the end points of the telecommunications service. BellSouth MemoryCall and the other precedents cited by the Commission do not provide any support for the Commission's conclusion that a telecommunications service provider and an information service provider can combine to provide "end-to-end" communications.

In fact, BellSouth MemoryCall lends considerable support to the conclusion that telecommunications terminating to an ISP POP within the same state are jurisdictionally intrastate. In BellSouth MemoryCall, the Commission made clear that, for the purposes of jurisdictional analysis, the enhanced service provider's "facilities and apparatus" constitute

¹⁸Id.

¹⁹GTE Rebuttal at 5. See also ADSL Tariff Order at n. 74.

a relevant end point.²⁰ Thus, in the specific case of a telecommunications service connecting ILEC end users to an ISP located within the same state, the relevant end point for the purposes of jurisdictional analysis is the location of the ISP's "facilities and apparatus." Because the "facilities and apparatus" at the ISP POP are typically located within the same state as the ISP's subscribers, traffic from these subscribers to the ISP POP is jurisdictionally intrastate.

Moreover, the BellSouth MemoryCall decision makes clear that telecommunications between an end user and an ISP can be intrastate, even when the ISP is providing an interstate information service. While the Commission claimed jurisdiction over the MemoryCall voice mail service, BellSouth MemoryCall acknowledges that calls to the voice mail platform are intrastate as long as the end user and the voice mail platform are in the same state.²¹ Applying this analysis to the Internet case, physically intrastate telecommunications between an end user and an ISP POP are not transformed into interstate telecommunications simply because the ISP provides interstate information services. Just as a call from an in-state caller to the MemoryCall platform is intrastate, a call from an in-state caller to an ISP POP is also intrastate.²² Therefore, BellSouth

²⁰BellSouth Memory Call, 7 FCC Rcd at 1621.

²¹According to BellSouth Memory Call, interstate communication occurs when an out-of-state caller leaves a message or the voice mail customer calls from out-of-state to retrieve a message. BellSouth Memory Call at ¶10.

²²There is no suggestion in BellSouth MemoryCall that, if an in-state caller retrieves a message left by an out-of-state caller, the call to retrieve the message is interstate.

MemoryCall supports the principle that the ISP POP is the relevant end point for the purposes of jurisdictional analysis.

III. The Commission Should Clarify that xDSL Services are Not Inherently Interstate Services and are not Inherently Access Services

In the ADSL Order, the Commission states that “[t]he issue whether GTE’s ADSL service offering constitutes an interstate access service involves determining how Internet traffic fits within our existing regulatory framework.”²³ This statement is simply incorrect.

The record shows that ADSL services have a wide range of uses that are not Internet-related.²⁴ Thus, the Commission did not need to “determine[] how Internet traffic fits within [the Commission’s] regulatory framework” in order to determine whether GTE’s ADSL service constitutes an interstate access service. Indeed, the Commission did not have to examine any particular use of GTE’s ADSL service. The Commission could have answered the question designated for investigation -- whether GTE’s ADSL service is properly tariffed at the federal level -- by simply noting that (1) ADSL is a transmission technology; and (2) that transmission services do not belong inherently to one jurisdiction

²³ ADSL Tariff Order at ¶4.

²⁴ For example, (1) GTE did not dispute MCI WorldCom’s observation, made in its Comments on GTE’s Direct Case, that “the ILECs’ tariff language does not limit their ADSL services to Internet-related applications.” (2) GTE, in the Description and Justification portion of Transmittal No. 1148, stated that GTE “will be providing access to the necessary network functions and equipment, on a nondiscriminatory basis, to enable an ISP, CLEC, IXC or any other entity to market and provide commercial ADSL service to their customers.” GTOC Transmittal No. 1148, D&J at 2; (3) The Public Utilities Commission of Ohio stated in its Comments that “[i]t is important for the FCC to recognize that, although its ADSL service will be used to connect to ISPs, the service actually has much broader applications.”

or the other.²⁵ Obviously, then, GTE's ADSL service is properly tariffed at both the federal and state levels.

MCI WorldCom is concerned that the ADSL Tariff Order may leave the impression that the classification of ADSL services (and other xDSL services) depends solely on Internet-related uses of these services. Even if the Commission does not reconsider its finding with regard to the jurisdictional nature of Internet-related uses of ADSL, the Commission should clarify that ADSL services (and other xDSL services) are not inherently Internet-related services, and are not inherently interstate services or inherently access services. In particular, the Commission should clarify that, while the Commission chose to focus on one particular use of xDSL -- ISP access -- in this proceeding, xDSL is a transmission technology with a variety of local, intrastate access, and interstate access uses, and the classification of an xDSL service will depend on the use to which it is put. The Commission should make clear that, in the ADSL Tariff Order, it was examining only one specific use of GTE's ADSL service -- Internet access in situations where more than ten percent of the Internet traffic is destined for websites in other states or countries.

Further, MCI WorldCom respectfully requests that the Commission reconsider the ADSL Tariff Order's blanket conclusion that more than ten percent of Internet traffic is destined for websites in other states or other countries.²⁶ Even if more than ten percent of

²⁵Even the ILECs acknowledge this. In its Direct Case in CC Docket No. 98-103, Pacific Bell stated that "[l]ike other transmission services and technologies, jurisdiction over ADSL service does not inherently reside within one jurisdiction or the other. Rather the interstate or intrastate use of Pacific's ADSL service will dictate jurisdiction." Pacific Bell Direct Case at 2.

²⁶ADSL Tariff Order at ¶26.

some end users' Internet traffic is destined for websites in other states or countries, the record in this proceeding does not support a conclusion that this is the case for all end users. It is entirely possible that less than ten percent of certain end users' Internet traffic may be destined for websites in other states or countries.

IV. Conclusion

For the reasons stated herein, the Commission should reconsider its conclusion that "the communications at issue here do not terminate at the ISP's local server, . . . but continue to the ultimate destination or destinations, very often at a distant Internet website accessed by the end user." The Commission should also clarify that xDSL services are not inherently interstate access services.

Respectfully submitted,
MCI WORLDCOM, INC.



Alan Buzacott
Richard S. Whitt
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-3204

David N. Porter
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036
(202) 776-1550

November 30, 1998

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on November 30, 1998.

A handwritten signature in cursive script, appearing to read "Alan Buzacott", is written over a horizontal line.

Alan Buzacott
Regulatory Analyst
1801 Pennsylvania Ave. NW
Washington, D.C. 20006
(202) 887-3204

CERTIFICATE OF SERVICE

I, Vivian I. Lee, do hereby certify that copies of the foregoing Petition for Reconsideration were sent via first class mail, postage paid, to the following on this 30th day of November, 1998.

International Transcription Services**
1231 20th Street, N.W.,
Washington, DC 20036

Jane E. Jackson**
Chief, Competitive Pricing Division
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Rich Lerner**
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Tamara Preiss**
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

John F. Raposa
GTE SERVICE CORPORATION
600 Hidden Ridge
HQE03J27
Irving, TX 75038

Gail L. Polivy
GTE SERVICE CORPORATION
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

R. Michael Senkowski
Gregory J. Vogt
Bryan N. Tramont
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Richard M. Rindler
Michael W. Fleming
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, DC 20007

Richard M. Rindler
Phyllis A. Whitten
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007

Eric J. Branfman
Morton J. Posner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, DC 20007

Janet S. Livengood, Esq.
Director of Regulatory Affairs
Hyperion Telecommunications, Inc.
DDI Plaza Two
500 Thomas Street
Suite 400
Bridgeville, PA 15017-2838

Susan M. Eid
MediaOne Group, Inc.
1919 Pennsylvania Avenue, NW
Suite 610
Washington, DC 20006

Michael Duke
KMC Telecom, Inc.
3075 Breckenridge Boulevard
Suite 415
Duluth, GA 30096

Dhruv Kanna
Covad Communications Company
2230 Central Expressway
Santa Clara, CA 95050

William Ieby
Virginia State Corporation Commission
Division of Communications
1300 East Main Street
P.O. Box 1197
Richmond, VA 23219

Jefrey D. Goltz
Washington Utilities & Transportation
Commission
1400 South Evergreen Park Drive, SW
P.O. Box 40128
Olympia, WA 98504

Mitchell Lazarus
Fletcher Heald & Hildreth
1300 North 17th Street
Eleventh Floor
Arlington, VA 22209

Ellen S. Levine
California Public Utilities commission
5050 Van Ness Avenue
San Francisco, CA 94102

Lawrence Malone
New York State Dept. Of Public Service
3 Empire State Plaza
Albany, NY 12223

Richard Metzger
Vice President & General Counsel
ALTS
888 17th Street, N.W., Suite 900
Washington, DC 20006

Barry Pineles
GST Telecom, Inc.
4001 Main Street
Vancouver, WA 98663

Gary L. Phillips
Ameritech
1401 H Street, NW
Suite 1020
Washington, DC 20005

David E. Screven
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Jonathan Jacob Nadler
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
Washington, DC 20044

Dana Frix
Douglas G. Bonner
Patrick J. Whittle
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007

Russell M. Blau
Michael W. Fleming
Swidler Berlin Shereff Friedman LLP
3000 K Street, NW
Washington, DC 20007

Brad E. Mutschelknaus
Jonathan E. Canis
Kelley Drye & Warren LLP
1200 19th Street, N.W., Fifth Floor
Washington, DC 20036

Lawrence W. Katz
Bell Atlantic
1320 N. Court House Road
8th Floor
Arlington, VA 22201

Barbara A. Dooley
Executive Director
CIX
1041 Sterling Road
Suite 104A
Herndon, VA 20170

Genevieve Morelli
Executive Vice President and General
Counsel
CompTel
1900 M Street, N.W., Suite 800
Washington, DC 20036

Robert J. Aamoth
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Jonathan E. Canis
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Fifth Floor
Washington, DC 20036

Brian Conboy
Thomas Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20036

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John Hunter
USTA
1401 H Street, NW
Suite 600
Washington, D.C. 20005

Durward D. Dupre
Darryl W. Howard
Pacific Bell
One Bell Plaza, Suite 3703
Dallas, TX 63101

John L. Clark
Goodin, MacBride, Squeri, Schlotz &
Ritchie, LLP
505 Sansome Street, Ninth Floor
San Francisco, CA 94111

William T. Lake
John H. Harwood II
Lynn R. Charytan
David M. Sohn
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington DC 20037

Robert B. McKenna
Jeffrey A. Brueggeman
U S West, Inc
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

Cindy Z. Schonhaut
Senior Vice President of Government
Affairs
ICG Communications, Inc.
161 Inverness Drive
Englewood, CO 80112

Albert H. Kramer
Michael Carowitz
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526

Richard J. Metzger
Vice President & General Counsel
ALTS
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Ruth Milkman
The Lawler Group
7316 Wisconsin Avenue, Suite 400
Bethesda, MD 20814

Steven Gorosh
Vice President and General Counsel
NorthPoint Communications, Inc.
222 Sutter Street
San Francisco, CA 94108

J. Daniel Long
Assistant Commission Attorney
North Carolina Utilities Commission
P.O. Box 29510
Raleigh, NC 27626-0510

Charles D. Gray
James Bradford Ramsay
NARUC
1100 Pennsylvania Ave, NW
Suite 608
P.O. Box 684
Washington, DC 20044-0684

Steven T. Nourse
Assistant Attorney General
Public Utilities Section
180 E. Broad St., 7th Floor
Columbus, OH 43215

Stephen J. Davis
Chief
Office of Policy Development
PUC of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Michael T. Weirich #82425
Assistant Attorney General
Of Attorneys for PUC of Oregon
Department of Justice
1162 Court Street, N.E.
Salem, OR 97310

Mark C. Rosenblum
J. Manning Lee
AT&T
295 North Maple Avenue
Room 3245H1
Basking Ridge, NJ 07920


Donna N. Lampert
James A. Kirkland
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004-2608

George Vradenburg, III
William W. Burrington
Jill A. Lesser
Steven N. Teplitz
America Online, Inc.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

Kevin Timpane
Esther H. Rosenthal
FirstWorld Communications, Inc.
9333 Genesee Avenue
San Diego, CA 92121

Jeffrey Blumenfeld
Glenn B. Manishin
Lisa N. Anderson
Stephanie A. Joyce
Blumenfeld & Cohen
1615 M Street N.W., Suite 700
Washington, DC 20036

****HAND DELIVERED**


Vivian I. Lee